

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GENERAL METALS OF TACOMA, INC., a  
Washington corporation, and ARKEMA,  
INC., a Pennsylvania corporation,

Plaintiffs,

v.

BEAN ENVIRONMENTAL LLC, a  
Delaware Limited Liability Company; and  
BEAN DREDGING LLC, a Louisiana  
Limited Liability Company,

Defendants.

Case No. C05-5306RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Plaintiffs' Motion for Partial Summary Judgment to Dismiss Defendants' Claims for Fraud and Negligent Misrepresentation [Dkt. #138].

Having considered the entirety of the records and file herein, and having heard the argument of the parties, the Court hereby rules as follows:

The defendants seek rescission of the contract between Bean and HHCG based upon HHCG's failure to disclose the presence of asbestos in areas to be dredged. Bean alleges that this failure to disclose is fraud in the inducement. The defendants argue that they would not have entered into the contract to dredge the area had they known of the presence of asbestos.

Rescission is an equitable remedy to be decided by the Court. *See Willener v. Sweeting*, 107 Wn.2d 388, 397 (1986). The defendants claim they were damaged as a result of the alleged fraud because they

1 entered into a contract they would not otherwise have entered. Based upon the facts presented so far, genuine  
2 issues of material fact exist as to whether or not defendants would have entered the contract had they known  
3 of the asbestos. The existence of genuine issues of material fact preclude the entry of summary judgment. It  
4 may appear after the Court has heard the evidence at trial that defendants' request to rescind the contract lacks  
5 merit; however, the Court will not at this time summarily dismiss this claim.

6 At trial, the fact of the discovery and remediation of asbestos may be addressed through testimony,  
7 however, the argument regarding fraud in the inducement justifying rescission will only be addressed to the  
8 Court outside the presence of the jury.

9 Plaintiffs' Motion for Partial Summary Judgment [Dkt. #138] is **DENIED**.

10 **IT IS SO ORDERED.**

11 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
12 pro se.

13 Dated this 1<sup>st</sup> day of December, 2006.

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16 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE